

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, Linda Breathitt,  
Pat Wood, III and Nora Mead Brownell.

San Diego Gas & Electric Company,  
Complainant,

v.

Docket No. EL00-95-038

Sellers of Energy and Ancillary Services  
Into Markets Operated by the California  
Independent System Operator and the  
California Power Exchange,  
Respondents.

Investigation of Practices of the California  
Independent System Operator and the  
California Power Exchange

Docket No. EL00-98-036

ORDER DENYING REHEARING

(Issued July 12, 2001)

This order denies rehearing of our order issued May 25, 2001 (May 25 Order),<sup>1</sup> which provided clarification and preliminary guidance on implementation of the mitigation and monitoring plan for the California wholesale electric markets adopted on April 26, 2001 (April 26 Order).<sup>2</sup>

Background

The April 26 Order established a new price mitigation plan for sales in the ancillary services and imbalance energy markets (spot markets) of the California Independent

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<sup>1</sup>San Diego Gas & Electric Company, et al., 95 FERC ¶ 61,275 (2001).

<sup>2</sup>San Diego Gas & Electric Company, et al., 95 FERC ¶ 61,115 (2001).

System Operator Corporation (ISO). That price mitigation plan set a market clearing price in the spot markets during times when the ISO declared a reserve deficiency. The market clearing price was based on a proxy price for natural gas inputs and emission allowances, as well as the heat and emission rates for the least efficient generator needed to meet demand. To enable the ISO to calculate market clearing prices, the April 26 Order required generators to supply the ISO with their heat and emission rates. The April 26 Order required the price mitigation to be implemented by May 29, 2001.

On May 18, 2001, the ISO made a filing in which it reported that it had still not received heat and emission rates from a number of generators. The ISO requested Commission guidance on how it should treat such generators. The ISO proposed that for the generating units that had not provided the requisite data or whose data the ISO believed to be inadequate (the submitted data only covered one operating point), the ISO would use data from a viable alternative source (e.g., either current or pre-existing Reliability Must-Run Contracts). If an alternative source of data did not exist and the generating unit continued to refuse to supply the requisite information, the ISO proposed to treat the non-compliant generators as price-takers, i.e., the ISO would assume a \$0/MWh bid for all available capacity from these units. Those generators, if dispatched, would then be paid the market clearing price.

We issued the May 25 Order to provide guidance on the ISO proposal, as well as three other aspects of the April 26 Order, prior to the May 29, 2001 implementation deadline. The May 25 Order accepted the ISO's proposal.

### Requests for Rehearing

On June 13, 2001, Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (jointly, Duke) filed a request for rehearing of the May 25 Order. Duke states that the April 26 Order suggested that the Commission intended generators to provide a single heat rate for each generating unit, whereas the ISO has demanded an eleven-point range of heat rates. Duke states that providing an eleven-point range simply increases the ISO's ability to establish a proxy price to its particular benefit.

On June 25, 2001, the California Independent System Operator Corporation (ISO) requests rehearing of several aspects of the Commission's May 25 Order. First, the ISO takes issue with the Ancillary Service price mitigation mechanism discussed in the May 25 Order, i.e., the use of the "relevant average hourly mitigated Imbalance Energy price" as a limit on the Ancillary Services market clearing price, with the ability of suppliers to be paid as-bid above that limit subject to cost-justification and refund. It argues that this approach (1) improperly suggests that a supplier of Ancillary Services can or should be able to justify Ancillary Service bids in excess of the average hourly mitigated Imbalance

Energy price; (2) only provides the potential for ex post mitigation of prices in the Ancillary Service markets by relying upon the average hourly mitigated Imbalance Energy price as the benchmark for Ancillary Service price mitigation; and (3) improperly adopts the same mitigation used for the Imbalance Energy Market. The ISO also requests that the Commission clarify that price mitigation in the ISO's Ancillary Service markets is and has been applicable in all hours. It states that the Commission did not address this in the May 25 Order, but did so in the June 19 Order<sup>3</sup> by extending price mitigation in the ISO's Ancillary Service markets to all hours.

The ISO further argues that the Commission improperly clarified that the ISO must ensure that a creditworthy purchaser or counterparty will support all transactions made with all generators pursuant to the April 26 Order's must-offer requirement. It maintains that this could undercut the very purpose for which the Commission mandated the must-offer requirement. The ISO also argues that the requirement of a creditworthy buyer for must-offer transactions is inconsistent with the requirement established by the June 19 Order that the ISO is to "add 10 percent to the market clearing price paid to generators for all prospective sales in its markets to reflect credit uncertainty."

On June 25, 2001, NRG Power Marketing, Inc. and NEO California Power LLC (jointly, NRG) filed a request for rehearing asking that the Commission clarify or grant rehearing to confirm that generators that have executed Summer Reliability Agreements (SRA) with the ISO have a right to assurance of payment and direct the ISO to file revised tariff sheets that clearly provide these generators with such a right. They state that the Cal ISO "has informally advised NEO California Power LLC (NEO California) that NEO California is not entitled to an assurance of payment for capacity transactions under the SRAs, but rather can only expect an assurance of payment for its energy transactions."<sup>4</sup>

### Discussion

As to Duke's request for rehearing, on June 19, 2001, we issued an order on rehearing of the April 26 Order (June 19 Order). In the June 19 Order, we considered and rejected objections to the ISO's use of an eleven-point range of heat rates, stating:

As noted by the ISO, by collecting eleven different operating points, the ISO will be able to approximate the actual incremental cost curve of each

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<sup>3</sup>San Diego Gas & Electric Company, et al., 95 FERC ¶ 61,418 (2001) (June 19 Order).

<sup>4</sup>NRG Request at 4.

generating unit and thereby develop representative proxy prices for each unit throughout the unit's operating range.

The ISO's proposal to include the minimum and maximum operating levels for each unit and nine points in between is reasonable. The ISO's heat curve reflects the minimum fuel load requirements requested by Williams. In addition, because the ISO will have the approximate heat rate curve for each unit, the ISO is directed to calculate the proxy market clearing price based upon the approximate point on the heat rate curve at which the last unit is dispatched. However, we will allow sellers to recover their actual start-up fuel costs.<sup>5]</sup>

For these same reasons, we deny Duke's request for rehearing here.

With respect to the ISO's concerns with the Ancillary Services price mitigation mechanism, we note that the ISO essentially wants the Commission to apply the price mitigation plan adopted in the June 19 Order retroactively to this proceeding. That is an issue that is more appropriately addressed on rehearing of the June 19 Order and, accordingly, we reject the ISO's arguments concerning the Ancillary Services price mitigation mechanism.

We also reject the ISO's arguments concerning creditworthiness. In the May 25 Order, the Commission merely reiterated what it had said in prior orders concerning creditworthiness (it covers all third-party generators for all transactions through the ISO) and expressed its expectation that the ISO would follow the creditworthiness requirement with respect to the must-offer requirement in the Mitigation Plan. The ISO now speculates that this could undercut the must-offer requirement. We continue to believe that the creditworthiness requirement is an important and necessary factor in assuring a properly functioning market in California and until the ISO offers more than mere speculation that this requirement could undercut the must-offer requirement, we will remain steadfast in our support for such a creditworthiness requirement. In addition, we reject the ISO's argument concerning an inconsistency between our creditworthiness requirement and the 10 percent adder to reflect credit uncertainty that was established in our June 19 Order. This issue is beyond the scope of the May 25 Order and, to the extent any alleged inconsistency exists, it arose because of the June 19 Order, and the ISO's argument is more appropriately raised in that proceeding. Thus, we deny the ISO's request for rehearing.

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<sup>5</sup>June 19 Order, slip at 33 (footnote omitted).

We deny NRG's request for rehearing, which is based entirely on some informal advice provided by the Cal ISO to NEO California. We explicitly stated in our May 25 Order that "we expect the ISO to ensure the presence of a creditworthy buyer for all transactions with all generators who offer power in compliance with the must-offer requirement in the mitigation plan."<sup>6</sup> No distinction was drawn between capacity transactions and energy transactions. Thus, no clarification of the May 25 Order or tariff modification is necessary.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.

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<sup>6</sup>May 25 Order at 61,972 (footnote omitted).